

REMARKS

Claims 8 and 10-12 were pending in the present application. By this response, claim 8 has been amended, claim 10 has been cancelled, and new claims 32 through 34 have been added. Accordingly, claims 8, 11-12, and 32-34 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. No new matter has been added.

The following remarks are in response to the grounds for rejection of claims set forth in the Office Action.

Rejections under 35 U.S.C. §102(b)

Claims 8 and 10-12 were rejected under 35 U.S.C. §102(b) as being anticipated by Edwards et al. (U.S. Patent No. 6,258,087). In response, claim 8 has been amended to distinguish the Edwards patent.

Edwards' device is an expandable electrode assembly used to treat tissue at or near a sphincter (such as the gastroesophageal junction) in the gastrointestinal tract. (See Edwards, col. 1, ll. 19-24). As the Examiner notes in the Office Action, the Edwards device includes an aspirating apparatus (46) that includes a single lumen (102) located at the distal end of the device. (See col. 16, ll. 6-13; FIG. 5). The function of the aspirating apparatus is to draw aspirated material and processing fluid through the lumen for discharge. Accordingly, only a single lumen opening is provided at the distal end of the device.

In contrast, claim 8 has been amended to recite that the apparatus includes “a plurality of suction ports substantially aligned along a length of the shaft and connected to a suction source via one or more tubes.” These features are supported in the specification at several locations including, for example, at paragraph 0030 and at FIG. 1. The number and location of the suction ports in the claimed device is significant because these ports provide the device with the ability to bring areas of the luminal GI tissue into contact with the shaft. (See paragraph 0031). Accordingly, these claim limitations reflect a significant difference between the device described and claimed in the present application and the device described in the Edwards et al. patent, which includes only a single aspiration port located at the terminal end of the device.

Because the Edwards et al. patent fails to teach at least one element recited in claim 8, there can be no anticipation of the claim. Applicant respectfully requests withdrawal of the rejection of the claim.

All of the other claims rejected over the Edwards et al. patent depend directly from claim 8. These claims are, therefore, also patentable for the reasons set forth above.

New Claims 32-34

New claims 32-34 each depend from claim 8. Claim 32 recites that the suction source comprises a suction pump. This feature is supported in the specification at paragraph 0030 and at FIG. 1. New claim 33 recites that the endoluminal support further comprises a working lumen extending through at least a distal portion of said shaft, and new claim 34 recites that the apparatus further comprises a handle attached at or near the proximal end of the support and a plurality of pull wires connecting said shaft to said handle, wherein at least a portion of the shaft has a first state in which the portion is substantially flexible and a second state in which the portion is substantially rigid. These features are supported in the specification at paragraph 0034.

The Edwards et al. patent does not teach or disclose at least the features recited in new claims 33 and 34. Accordingly, these recitations provide additional grounds supporting the patentability of the claims. A notice of allowance is respectfully requested.

Amendment and/or cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. Similarly, unless explicitly stated, nothing contained or not contained in this paper should be construed as an assent to any of the Examiner's stated grounds for rejecting the claims, including specifically the Examiner's characterization of the teachings of the cited art and the Examiner's contentions that any combinations of cited art would have been obvious. Rather, the present amendments to the claims and Remarks are an attempt to expedite allowance and issuance of the currently pending claims. No new matter has been added.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to Deposit Account No. 50-3973 referencing Attorney Docket No. USGINZ00600. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,


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